

Personal  
Communications  
Industry  
Association

EX PARTE OR LATE FILED  
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MAY 25 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 25, 1999

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
12<sup>th</sup> Street, Lobby, TW-A325  
Washington, DC 20554

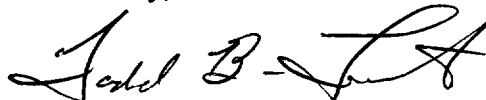
**Re: Ex Parte Letter  
WT Dkt. No. 97-213**

Dear Ms. Salas:

Earlier today, the Personal Communications Industry Association ("PCIA") delivered a letter to Wireless Telecommunications Bureau Chief Thomas Sugrue asking the Commission to clarify: (1) whether non-interconnected SMRs and private carriers are exempt from the Communications Assistance for Law Enforcement Act ("CALEA"), and (2) whether an interconnected SMR or other interconnected Part 90 two-way carrier system utilizing analog technology, which may be readily monitored with devices available in the consumer market, needs to be included in CALEA requirements. PCIA also requested that the Commission delay the carrier security compliance procedure filing deadline for SMR and other Part 90 carrier licensees until the Commission clarifies which systems are required to comply with CALEA and establishes security compliance procedures. A copy of this letter is attached.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter are being filed with your office. Should you have any questions concerning this filing, please feel free to contact me at (703) 739-0300.

Sincerely,



Todd B. Lantor  
Director, Government Relations  
Personal Communications Industry Association

No. of Copies rec'd 2+1  
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May 25, 1999

**VIA HAND DELIVERY**

Thomas Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Stop Code 3-C252  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Communications Assistance for Law Enforcement Act  
Impact on Specialized Mobile Radio and Part 90 Carrier Systems

Dear Mr. Sugrue:

On March 15, 1999, the FCC released a Report and Order in CC Docket No. 97-213, otherwise known as the Communications Assistance for Law Enforcement Act ("CALEA") proceeding.<sup>1</sup> The Report and Order has not yet been published in the Federal Register, and we understand that the Commission may be reconsidering on its own motion minor issues discussed in the item.

Telecommunications carriers are required to submit to the Commission the policy and procedures adopted to comply within 90 days from the effective date of the rules adopted in the R&O. Since the item has not yet been published in the Federal Register, the "clock" has not started running on when the filing must be made.

There have been "safe harbor" protocols established for cellular, PCS and paging for how interception may be accomplished. This protocol has not been established for SMR systems or other carrier systems licensed on Part 90 frequencies. In addition, in its Notice of Proposed Rule Making, the FCC tentatively concluded that "... private mobile service providers are not subject to the

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<sup>1</sup>FCC 99-11.

requirements of CALEA....”<sup>2</sup> The Commission’s tentative conclusion was affirmed in the Report and Order adopted January 29, 1999 and released March 15, 1999.<sup>3</sup> Thus, a reasonable interpretation is that non-interconnected SMRs and private carriers are exempt from CALEA. However, it is not clear as to whether this interpretation is accurate. It is also unclear as to whether an interconnected SMR or other interconnected Part 90 two-way carrier system utilizing analog technology which may be readily monitored with devices available in the consumer market needs to be included in CALEA requirements at all.<sup>4</sup> Monitoring of these frequencies by federal officials may be readily accomplished without the assistance of the carrier licensee.

Thus, it would appear that it is difficult for an SMR operator or other Part 90 two-way carrier licensee to: (1) accurately determine whether the system must comply with CALEA; and, if so (2) how to file the adopted policy and procedures with the Commission, since no such requirements have been established for these carriers.

It would therefore be appropriate for the Commission to delay the filing deadline for SMR and other Part 90 carrier licensees until such time as the Commission clarifies which systems are required to comply with CALEA and there have been compliance procedures established. To require any filings prior to these conclusions would cause considerable confusion.

PCIA hopes that the Commission will be able to consider these issues in its internal review of the CALEA Order. If you have any questions, please do not hesitate to call.

Sincerely,



Mary McDermott  
Senior Vice-President/Chief of Staff  
Government Relations

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<sup>2</sup>Notice of Proposed Rule Making, CC Docket No. 97-213, 13 FCC Rcd 3149, 3161-62 (1997)(NPRM).

<sup>3</sup>Report and Order, CC Docket No. 97-213, FCC 99-11, released March 15, 1999 (“R&O”). As of this date, the R&O has not been published in the Federal Register.

<sup>4</sup>Analog SMR systems and other carrier systems utilizing Part 90 frequencies generally utilize a single transmitter site which may be easily monitored. Pursuant to 18 U.S.C. §2511(g)(ii)(II), such transmissions are “generally available to the public,” and interception and access are not prohibited by law. To the extent that these carriers systems share frequencies with other licensees, it is necessary that the transmissions be monitored, and the law provides a specific exemption for co-channel monitoring. 18 U.S.C. § 2511(g)(v).